

STATE OF TEXAS §

COUNTY OF TRAVIS §

CONTRACT FOR PROFESSIONAL ACCOUNTING SERVICES

THIS Contract ("Agreement") is made by and between the State of Texas, acting by and through the Texas Department of Transportation ("Department") and Deloitte & Touche LLP ("Vendor").

BACKGROUND

As part of its responsibilities under Tex. Gov. Code 2254, Subchapter A, the Department is authorized to enter into a contract for professional services, including accounting services, from a person who is licensed or registered as a certified public accountant.

Pursuant to Texas Government Transportation Code Sec. 201.201, the Texas Department of Transportation is an agency of the State of Texas that is managed by an executive director and governed by a five member Texas Transportation Commission.

The Department and the Vendor therefore mutually agree as follows:

AGREEMENT

1. SCOPE.

The Department and the Vendor will furnish items and perform services as specified in Work Authorizations executed pursuant to Section 5. Attachment B, Services To Be Provided By The Department, describes responsibilities of the Department applicable to all Work Authorizations executed hereunder and Attachment C, Services To Be Provided By The Vendor, describes generally the nature of services that may be provided by Vendor pursuant to a Work Authorization executed hereunder. Vendor shall have no obligation to perform any work or provide any services except as specifically set forth in a Work Authorization executed hereunder.

2. CONTRACT PERIOD.

2.1 CONTRACT PERIOD. This Agreement becomes effective when executed by both parties (the "Effective Date"). The term of this Agreement will be for two (2) years from Effective Date (the "Contract Period"), unless terminated sooner in accordance with the terms herein. The term of a Work Authorization will be as set forth in the Work Authorization, unless terminated sooner in accordance with the terms herein.

2.2 RENEWAL. This Agreement may be renewed, at the mutual agreement of the parties, for up to four (4) one-year renewals contingent on satisfactory performance. Renewals must be fully executed before the end date of the contract period in effect at the time of renewal.

2.3 INTENTIONALLY LEFT BLANK

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- 2.4 **EXCLUDED WORK.** Services subject to Transportation Code, §223.041, Engineering and Design Contracts, shall not be performed under this Agreement.
3. **COMPENSATION.**
- 3.1 **NON-APPROPRIATION OF FUNDS.** The maximum amount payable under this Agreement is \$700,000 (the "Maximum Amount"). The Department shall not be obligated to pay for, and Contractor shall not be obligated to perform, Services under this Agreement in excess of the Maximum Amount unless and until the Maximum Amount is increased via a mutually agreed and executed amendment to this Agreement. Payment under Work Authorizations executed pursuant to this Agreement beyond the end of the current fiscal biennium is subject to availability or appropriated funds. If funds are not appropriated for a particular Work Authorization, such Work Authorization shall be terminated immediately upon the Department's written notice to Vendor thereof with no liability to either party other than the payment by Department for the Work performed by Vendor through the effective date of termination.
- 3.2 **BASIS OF PAYMENT.** The basis of payment and reimbursement of costs shall be as set forth in the applicable Work Authorization, based on the rates included in Attachment E, Schedule of Rates.
- 3.3 **REIMBURSEMENT OF ELIGIBLE COSTS.** To be eligible for reimbursement, the Vendor's costs must be in accordance with the terms of the applicable Work Authorization.
- 3.4 **THE VENDOR PAYMENT OF SUBPROVIDERS.** If, for any reason, subproviders, if any, utilized by the Vendor to perform services under a Work Authorization are not paid before the Department reimburses the Vendor for its Services, the Vendor shall pay such subproviders all undisputed amounts due for their work thereunder no more than 10 days after the Vendor receives payment for the work, unless a different time is specified by law. The Department may withhold all payments that have or may become due under such Work Authorization if the Vendor fails to comply with the 10-day payment requirement. The Department may also suspend the Work under such Work Authorization until subproviders are paid. This requirement also applies to all lower-tier subproviders under a Work Authorization, and this provision must be incorporated into all subcontracts under a Work Authorization.
4. **PAYMENT REQUIREMENTS.**
- 4.1 **INVOICES.** The Vendor shall request payment by submitting the original of an itemized invoice in a form acceptable to the Department. The invoice shall be supported by documentation required for the basis of payment as specified in the applicable Work Authorization, based on the rates found in Attachment E, Schedule of Rates. The Vendor may submit an invoice as set forth in the applicable Work Authorization, which shall be no more frequently than monthly and no later than ninety days after completing deliverables specified in a Work Authorization. An invoice shall show the contract number, Work Authorization number, the total amount earned under the applicable Work Authorization to the date of submission, and the amount due under the applicable Work Authorization as of the date of the invoice.

- 4.2 **WITHHOLDING PAYMENTS.** If payment is withheld, the Department shall notify the Vendor and specify conditions that would allow the Department to release the payment. The Department reserves the right to withhold payment under a Work Authorization:
- (a) if a dispute over Vendor's Work thereunder or costs associated therewith is not resolved within thirty (30) days, provided that the Vendor may halt provision of the work upon receipt of any notice from the Department of any dispute regarding the work until such dispute is resolved;
 - (b) pending verification that the Work thereunder has been performed by Vendor in accordance with the requirements therein;
 - (c) if the Vendor becomes a delinquent obligor under Family Code, §231.006; or
 - (d) if the State Comptroller of Public Accounts will not issue a warrant to the Vendor.

Notwithstanding anything in the forgoing to the contrary, the Department agrees to fully cooperate with the Vendor and not unreasonably withhold any approvals needed for the Vendor to perform its Services. The Department acknowledges and agrees that, to the extent that the cause of any delay or failure is attributable to a cause other than the Vendor such cause shall be taken into account and considered as part of any decision.

- 4.3 **REQUIRED REPORTS.**
- (a) As required in Attachment F, the Vendor shall submit Progress Assessment Reports to report payments made to Disadvantaged Business Enterprises or Historically Underutilized Businesses performing work as a subprovider under a Work Authorization executed hereunder. One (1) copy shall be submitted with each invoice. For clarity, notwithstanding anything to the contrary in Attachment F, this Agreement has no requirement or goals for Vendor to utilize Disadvantaged Business Enterprises or Historically Underutilized Businesses in the performance of Services hereunder.
 - (b) With each invoice, the Vendor shall submit a separate progress report showing the percentage of Work that was completed under the applicable Work Authorization during the billing period and the percentage of Work completed to date under the applicable Work Authorization. The Vendor shall also submit any written report reasonably requested by the Department to document the progress of the Work.
- 4.4 **SUBPROVIDERS AND SUPPLIERS LIST.** The Vendor must provide the Department a list of all subproviders and suppliers that submitted quotes or proposals for subcontracts in connection with any Work Authorization executed hereunder. This list shall include such subproviders' and suppliers' names, addresses, and telephone numbers.
- 4.5 **DEBT TO THE STATE.** If the State Comptroller of Public Accounts is prohibited from issuing a warrant or initiating an electronic funds transfer to the Vendor because of a debt owed to the State, the Department shall apply all payment due the Vendor to the debt or delinquent tax until the debt or delinquent tax is paid in full.

5. WORK AUTHORIZATIONS.

- 5.1 **FORM.** During the term of this Agreement, the Department may request Vendor provide services pursuant to individual work authorizations using the form included in Attachment D (Work Authorizations and Supplemental Work Authorizations). Once executed by the Department and Vendor, each work authorization ("Work Authorization") is binding on the parties thereto. Vendor will work in good faith with the Department to agree to the contents of each Work Authorization, which shall include the information described in Section 5.3, below. Vendor must sign and return a work authorization within seven (7) working days after Vendor's receipt of a mutually agreed work authorization. Refusal to accept a work authorization may be grounds for termination of the Agreement pursuant to Section 23.1(c).
- 5.2 **USE.** The Department shall not be obligated to pay for, and Vendor shall not be obligated to perform, any work until the Department and Vendor have signed a Work Authorization covering such work. Costs incurred by Vendor before a Work Authorization is fully executed or after the expiration or earlier termination of the Work Authorization are not eligible for reimbursement. The term of a Work Authorization may not extend beyond the then-current expiration date of the Agreement.
- 5.3 **CONTENTS.** Each Work Authorization will specify (1) the specific services to be performed by Vendor under the Work Authorization (the "Services" or "Work"); (2) the period of performance, along with any "firm performance due dates", if any; (3) as applicable, a work schedule with milestones and/or a budget as described in Section 5.4, below; and (5) the basis of payment, whether cost plus, fixed fee, unit cost, lump sum, not-to-exceed, or specified rate, and the Not-to-Exceed Amount (as defined in Section 5.4, below) for any such work schedule. In the event of any conflicting terms and conditions between a Work Authorization and the Agreement, the terms and conditions of the Agreement shall prevail and govern the work and costs incurred.
- 5.4 **WORK AUTHORIZATION BUDGET.** Each Work Authorization may include a Work Authorization workplan and/or budget setting forth in detail (1) the computation of the estimated cost of the work as described in the Work Authorization, (2) the estimated time (hours/days) required to complete the Services at the hourly rates established in Attachment E, Schedule of Rates; and/or (3) a work plan that includes a list of the work to be performed and number of calendar days to complete the work.

Each Work Authorization shall include a not-to-exceed-amount for the Work Authorization ("Not-to-Exceed Amount"). The Department will not be responsible for paying for, and unless otherwise agreed in a Work Authorization, Contractor will not be responsible for providing, Services in excess of the Not-to-Exceed Amount.

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- 5.5 **NO GUARANTEED WORK.** Work Authorizations are requested at the discretion of the Department. While it is the Department's intent to issue Work Authorizations hereunder, Vendor shall have no cause of action conditioned upon the lack or number of Work Authorizations issued.
- 5.6 **INCORPORATION INTO CONTRACT.** Each Work Authorization shall be signed by both parties and once so signed, becomes a part of the Agreement. Vendor shall promptly notify the Department of any event that will affect completion of the Work Authorization.
- 5.7 **SUPPLEMENTAL WORK AUTHORIZATIONS.** Either party may request changes to the Services, Deliverables, and/or any other aspect of a Work Authorization through a written change request ("Change Request"). Promptly thereafter the parties shall discuss what impact the Change Request will have on the Services and Deliverables and on pricing, timing, and other terms of the applicable Work Authorization. Any changes to a Work Authorization agreed upon by the parties as a result of the foregoing process shall be set forth in a written supplemental work authorization signed by both parties (a "Supplemental Work Authorization"), in the form identified and attached hereto as Attachment D. Once a Change Order is signed it shall amend, and become part of, the applicable Work Authorization. Neither party is obligated to change the Services, Deliverables, or any other aspect of a Work Authorization unless a Supplemental Work Authorization for such change has been signed by the parties.
- 5.8 **INTENTIONALLY LEFT BLANK.**
- 5.9 **EMERGENCY WORK AUTHORIZATIONS.** The Department, at its sole discretion, may accept Vendor's signature on a faxed copy of the Work Authorization as satisfying the requirements for executing the Work Authorization, provided that the signed original is received by the Department within five business days from the date on the faxed copy.
- 5.10 **DELIVERABLES.** Vendor shall submit the Deliverables as specified in the executed Work Authorization to the Department for review and acceptance. The Department shall approve each Deliverable that conforms in all material respects to the requirements therefor set forth in the applicable Work Authorization. Approval of a Deliverable shall be deemed given if the Department has not provided Vendor with written notice of such approval or with written notice that a Deliverable does not conform with the foregoing within fifteen (15) days of delivery (or such other period of time as may be agreed by the parties in a Work Authorization).
6. **SIGNATORY WARRANTY.**
The undersigned signatory for the Vendor warrants that the signatory is a partner of the organization for which this Agreement is executed and has the authority to execute this Agreement on behalf of the Vendor. This warranty is made to induce the Department to enter into this Agreement.
7. **NOTICES.**

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- 7.1 All notices to either Party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to the party at the following addresses.

<u>Vendor</u>	<u>Department</u>
Deloitte & Touche LLP Attn: Kathryn Schwerdtfeger, Partner 400 West 15 th Street, Suite 1700 Austin, Texas 78701	Texas Department of Transportation Attn: Finance Division 125 E. 11st Street Austin, Texas 78701

- 7.2 All notices shall be deemed given on the date so delivered, unless otherwise provided in this Agreement. Either party may change the above address by sending written notice of the change to the other party.

8. **INCORPORATION OF PROVISIONS.**

The Attachments A through F are made part of this Agreement. The parties shall comply with the provisions of Attachments A through F as if they were set forth in full within the body of this Agreement.

THE STATE OF TEXAS

**TEXAS DEPARTMENT OF
TRANSPORTATION**

DELOITTE & TOUCHE LLP

Kathryn Schwerdtfeger
Signature

Kathryn Schwerdtfeger, Partner

Print Name and Title

9-14-15
Date

BZM
Signature

Brian Ragland, Director, Finance
Print Name and Title

9-15-15
Date

ATTACHMENTS

- Attachment A – General Provisions
- Attachment B – Services To Be Provided By The Department
- Attachment C – Services To Be Provided By The Vendor
- Attachment D1 – Form of Work Authorization
- Attachment D2 – Form of Supplemental Work Authorization
- Attachment E – Schedule Of Rates
- Attachment F – HUB Reporting Forms

ATTACHMENT A
General Provisions

1. LIMITATION OF LIABILITY; LIMITATION ON DAMAGES.

1.1 The Department agrees to release the Vendor and its personnel from any liability and costs relating to the Vendor's services under this Agreement attributable to any misrepresentations by the Department.

1.2 In no event shall Vendor, its subproviders, or their respective personnel be liable for any claims, liabilities, or expenses relating to this Agreement, any Work Authorization, or the Services (i) for an aggregate amount in excess of the fees paid by the Department to Vendor under the applicable Work Authorization, except where it is judicially determined that the Vendor performed its Services with bad faith or willful misconduct, or (ii) for any special, indirect, consequential, incidental, punitive, or exemplary damages or loss nor any lost profits, savings, or business opportunity.

2. SUPPLEMENTAL AGREEMENTS.

The terms of this Agreement may be modified by a supplemental written agreement, signed by both parties. A supplemental agreement must be fully executed within the Contract Period.

3. ADDITIONAL WORK.

3.1 **NOTICE.** If the Vendor believes that any requested work is beyond the scope of Attachment C to this Agreement ("Additional Work"), the Vendor shall promptly notify the Department in writing and describe how such requested work constitutes Additional Work.

3.2 **SUPPLEMENTAL AGREEMENT.** If the Department finds that the work does constitute Additional Work, the Department shall so advise the Vendor and shall not execute a Work Authorization for such Additional Work unless and until the parties execute a supplemental agreement, as appropriate, to amend Attachment C to cover such Additional Work.

3.3 **WAIVER OF RIGHTS.** By failing to comply with this article, the Vendor waives any right to compensation or reimbursement with regard to Additional Work.

4. PROGRESS.

4.1 **COMMUNICATIONS.** From time to time during the progress of the Work, the Vendor shall confer with the Department. The Vendor shall prepare and present all information that is reasonably requested by the Department or is necessary for the Department to evaluate the progress of the Work.

4.2 **REPORTS.** The Vendor shall promptly advise the Department in writing of events that may have a significant effect on the progress of the deliverables set forth in a Work Authorization.

(a) The Vendor shall promptly advise the Department in writing of any problems, delays, or adverse conditions that will materially affect Vendor's ability to perform the Work as agreed in a Work Authorization. This notification will be accompanied by a statement of the action taken or

contemplated by the parties and any state or federal assistance needed to resolve the situation.

- (b) The Vendor shall also promptly advise the Department in writing of favorable developments or events that enable the Vendor to complete the Work sooner than anticipated.

5. PERSONNEL, EQUIPMENT, AND MATERIAL.

- 5.1 **THE VENDOR RESOURCES.** The Vendor shall maintain an office, employ sufficient personnel, and possess adequate equipment and materials to perform the Services required under this Agreement. The Vendor certifies that it currently has adequate qualified personnel in its employment for performance of the Services required under this Agreement or that it will be able to obtain adequate qualified personnel from sources other than the Department.
- 5.2 **REMOVAL OF THE VENDOR EMPLOYEE.** All employees of the Vendor assigned to perform the Work under this Agreement shall have sufficient knowledge and experience to enable them to perform the duties assigned to them. The Department may require the Vendor to remove any employee from performing the Work authorized in this Agreement for legally permissible reasons if, in the sole opinion of the Department, the Work performed by that employee does not comply with this Agreement or the conduct of that employee is detrimental to the performance of the Work. Notwithstanding the foregoing, the Department may not require the Vendor to remove an employee if such reasons conflict with professional standards or interfere with the Vendor's independence in conducting audits.
- 5.3 **KEY PERSONNEL.** The Vendor's "Key Personnel" shall be comprised of the following employees: Kathryn Schwerdtfeger.
- 5.4 **REMOVAL OF KEY PERSONNEL.** The Vendor shall notify the Department in writing as soon as possible after a project manager or Key Personnel is removed from performing Work under this Agreement and shall to the extent permissible pursuant to the Vendor's internal policies, give the reason for the removal. In any event, this notice must be given no later than five business days after the removal.
- 5.5 **STATE APPROVAL OF REPLACEMENT KEY PERSONNEL.** Except in the event of disability, illness, grave personal circumstances, or resignation, termination, or other severance of association, the Vendor may not replace the project manager or Key Personnel, temporarily or permanently, without the advance written approval of the Department.
- 5.6 **OWNERSHIP OF ACQUIRED PROPERTY.** Upon full payment therefore and subject to the terms and conditions hereof, the Department shall own all intellectual property developed by Vendor for delivery to the Department under this Agreement (the "Deliverables" or "Work Product"), except for any Vendor IP embedded therein. Vendor has created, acquired, or otherwise has rights in, and may, in connection with the performance of the work hereunder, employ, provide, modify, create, acquire, or otherwise obtain rights in, works of authorship, materials, information, and other intellectual property (collectively, the "Vendor IP"). To the extent any Vendor IP is contained in a Deliverable,

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subject to the Department's full and final payment to Vendor the applicable Work Authorization, Vendor hereby grants to the Department the right to use such Vendor IP in connection with its use of such Deliverable. Except for the foregoing license grant, Vendor or its licensors retain all rights in and to all Vendor IP. All intellectual property and equipment owned by the Department shall be delivered to the Department when the Agreement terminates.

6. SUBCONTRACTING.

- 6.1 PRIOR APPROVAL.** The Vendor shall not assign, subcontract, or transfer any of Vendor's professional services related to the Work under this Agreement without the advance written approval of the Department.
- 6.2 REQUIRED PROVISIONS.** All subcontracts for Services shall include provisions indicating that such subproviders will comply the portions of this Attachment A, General Provisions, that are applicable to the scope of services to be performed by such subprovider.
- 6.3 THE VENDOR RESPONSIBILITIES** A subcontract does not relieve the Vendor of any responsibilities under Agreement.

7. THE VENDOR'S RESPONSIBILITIES.

Subject to the accuracy, efficiency, and correctness of the information and documentation provided by the Department, the Vendor shall be responsible for the performance of its Work in a competent and professional manner and shall promptly make any revisions or corrections made necessary by its errors, omissions, or negligent acts, if any, in order to conform the Deliverables in all material respects to the specifications set forth in the applicable Work Authorization, following receipt of written notice of such error(s) provided to Vendor as part of the acceptance process described in Section 5.10. No additional compensation shall be paid for work performed under this paragraph by the Vendor to correct its own errors. The Vendor shall maintain compliance with applicable professional standards to which Vendor is subject.

8. INSPECTION OF WORK.

- 8.1 REVIEW RIGHTS.** Authorized representatives of the Department and, when federal funds are used, the U.S. Department of Transportation shall have the right at reasonable times to review the Deliverables at the premises at which the Work is being performed, but not to direct, the Work performed under Agreement. The Parties do not anticipate expending federal funds in connection with this Agreement.
- 8.2 REASONABLE ACCESS.** The Vendor shall provide and require its subproviders to provide all reasonable facilities and assistance for the safety and convenience of state or federal representatives in the performance of their duties.

9. SUBMISSION OF WORK PRODUCT.

At the Department's request, all Work Products shall be submitted in preliminary form for comment by the Department before the final Work Product is issued. The Department's comments on the Vendor's preliminary Work Product may be considered, if appropriate, in the final Work Product.

10. MAINTENANCE, RETENTION, AND AUDIT OF RECORDS.

10.1 **RETENTION PERIOD.** The Vendor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred for the Services provided ("Records"). The Vendor shall make the Records available at its office during the Contract Period and for seven years from the date of final payment under Agreement, until completion of all audits, or until pending litigation has been completely and fully resolved, whichever occurs last.

10.2 **AVAILABILITY.** The Department, the Federal Highway Administration, the United States Department of Transportation, its Office of Inspector General, the State Auditor's Office, and the United States Comptroller General shall have access to the Records for the sole purpose of making audits, examinations, excerpts, and transcriptions of such Records in connection with Vendor's Work, provided that such Records will be made available to the Department during the Vendor's normal business hours, to the extent permitted by law. Should such records contain references to other contractors or other clients of the Vendor who are not connected with this Agreement, or to personnel of Vendor, then such references may be redacted by Vendor, upon giving notice to the Department, giving justification for the redaction. The Parties do not anticipate expending federal funds in connection with this Agreement.

10.3 **STATE AUDITOR.** The State Auditor may conduct an audit or investigation of any entity receiving funds directly under this Agreement or indirectly through a subcontract under this Agreement. Acceptance of funds directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with reasonable access to any information the State Auditor considers relevant to the investigation or audit.

11. CIVIL RIGHTS COMPLIANCE.

This provision applies only to the extent federal funds are expended in connection with this Agreement.

11.1 **COMPLIANCE WITH REGULATIONS.** The Vendor shall comply with the regulations of the U.S. Department of Transportation, 49 CFR Parts 21, 25, 27, and 28, as they relate to nondiscrimination, and with Executive Order 11246, titled Equal Employment Opportunity, as amended by Executive Order 11375. These regulations and orders are collectively referred to as the Regulations.

11.2 **NONDISCRIMINATION.** The Vendor, with regard to the Work performed by it under this Agreement, shall not discriminate on the basis of race, color, sex, national origin, age, religion, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

11.3 **SOLICITATIONS FOR SUBCONTRACTS.** In all solicitations for work to be performed under a subcontract under this Agreement, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Vendor of the Vendor's obligations under Agreement and the

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Regulations relative to nondiscrimination on the basis of race, color, sex, national origin, age, religion, or disability.

11.4 INFORMATION AND REPORTS. Subject to Section 6 of the Agreement, the Vendor shall provide all information and reports required by the Regulations or by directives issued under the Regulations. The Vendor shall also permit access to its books, records, accounts, other sources of information, and to its facilities, to the extent they are determined by the Texas Department of Transportation or the Federal Highway Administration to be pertinent to ascertaining compliance with the Regulations or directives issued under the Regulations. If any information requested of the Vendor is in the exclusive possession of another who fails or refuses to furnish this information, the Vendor shall so certify to the Texas Department of Transportation or the Federal Highway Administration, as appropriate, and shall explain in detail the efforts it has made to obtain the information.

11.5 SANCTIONS FOR NONCOMPLIANCE. If the Vendor does not comply fully with the nondiscrimination provisions of Agreement, the Department shall impose whatever contract sanctions it or the Federal Highway Administration considers appropriate and that comply with applicable law, including:

- (a) Withholding payments until the Vendor complies; or
- (b) Terminating or suspending Agreement, in whole or in part.

11.6 INCORPORATION OF PROVISIONS. The Vendor shall include the provisions of paragraphs 12.1 through 12.5 in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations or directives issued under the Regulations. If the Vendor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of its inclusion of these provisions, the Vendor may ask the Department to enter into that litigation to protect the interests of the Department and may ask the United States to enter into that litigation to protect the interests of the United States.

12. INSURANCE.

The Vendor certifies that it has an insurance certificate on file with Contract Services of the Texas Department of Transportation in the amount specified on Form 1560-CSS. The Vendor certifies that it will keep current insurance on file with that office for the duration of the Contract Period. If insurance lapses during the Contract Period, the Vendor shall cease work until a new certificate of insurance is provided.

13. CHILD SUPPORT CERTIFICATION.

Under Section 231.006, Texas Family Code, the Vendor certifies that the individual or business entity named in Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that Agreement may be terminated and payment may be withheld if this certification is inaccurate. If the above certification is shown to be false, then to the extent required by Section 231.006, Texas Family Code, Vendor is liable to the state for attorney's fees, the cost necessary to complete the contract, including the cost of advertising and awarding a second contract, and any other damages provided by law or this Agreement. A child support obligor or business entity ineligible to receive payments because of a payment delinquency of more than thirty (30) days remains ineligible until: all arrearages have been paid; the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or the court of continuing jurisdiction over the child support order has granted the obligor an exemption from Subsection (a) of Section 231.006, Texas Family Code, as part of a court-supervised effort to improve earnings and child support payments.

14. OWNERSHIP OF DATA.

14.1 DISPOSITION OF DOCUMENTS. All documents and data furnished to the Vendor by the Department under this Agreement shall be delivered to the Department at its request. The Vendor, at its own expense, may retain copies of documents or any other data that have been furnished by the Department under the Agreement, but use of the documents or data other than in connection with the performance of the Work or as otherwise permitted under this Agreement is subject to permission by the Department.

14.2 RELEASE OF ACCOUNTING SERVICES DATA AND DOCUMENTS. Except as otherwise set forth in Section 28, below, the Vendor will not release any confidential accounting services data or other confidential documents provided by the Department to Vendor under this Agreement except to its subproviders and only to the extent necessary to complete the Work under this Agreement. All subcontracts shall include a provision that acknowledges the confidentiality of any confidential information provided by the Department and Department's ownership of such data and documents and prohibits its use except to the extent necessary to complete the Work under this Agreement. The Vendor is responsible for any improper use of such confidential data or documents by its employees, officers, or subproviders, including costs, damages, or other liability resulting from such improper use to the same extent that Vendor would be responsible for its own improper use. Neither the Vendor nor any subprovider may charge a fee for accounting services data or documents.

15. COMPLIANCE WITH LAWS.

The Vendor shall comply with all federal, state, and local laws, statutes, codes, ordinances, rules, and regulations and with the orders and decrees of any court and of any administrative body or tribunal in any manner affecting the performance of Agreement, including worker's compensation laws, minimum and maximum salary and wage statutes and regulations, nondiscrimination laws, and licensing laws and regulations, applicable to it in its performance of the Services. At the request of the Department, the Vendor shall meet with the Department to discuss our policies regarding compliance such applicable laws and regulations.

16. NONCOLLUSION.

16.1 WARRANTY. The Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee or personnel working solely for the Vendor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or the Vendor any fee, commission, percentage,

brokerage fee, gifts, or any other consideration, contingent on or resulting from the award or making of this Agreement.

- 16.2 **LIABILITY.** For breach or violation of this warranty, the Department shall have the right to terminate this Agreement without incurring any liability or in its discretion, to deduct from the contract price or compensation or otherwise to recover the full amount of the fee, commission, percentage, brokerage fee, gifts, or other consideration.

17. DEBARMENT CERTIFICATIONS.

The parties are prohibited from making any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, "Debarment and Suspension." By executing this Agreement, the Vendor certifies that it is not currently debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549. The parties to this Agreement shall require any party to a subcontract or purchase order awarded under this Agreement to certify its eligibility to receive Federal funds and, when requested by the Department, to furnish a copy of the certification.

18. LOBBYING CERTIFICATION.

In executing this Agreement, the signatory certifies to the best of his or her knowledge and belief that:

- 18.1 **PAYMENT OF FUNDS.** No federal appropriated funds have been paid or will be paid by or on behalf of the parties to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 18.2 **CERTIFICATION OF STATE.** Vendor certifies that it is not a person required to register as a lobbyist under Chapter 305, Texas Government Code.
- 18.3 **DISCLOSURE FORM.** If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the signatory for the Funding Agency shall complete and submit the federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 18.4 **SUBAWARDS.** The parties shall require that the language of this certification be included in the subcontracts for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.
- 18.5 **PENALTIES.** Submission of this certification is a prerequisite imposed by Title 31 U.S.C. §1352 for making or entering into this Agreement. Any person who

fails to file the required certification under this Section shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

19. GRATUITIES.

19.1 EMPLOYEES NOT TO BENEFIT. Employees of the Texas Department of Transportation may not accept any benefit, gift, or favor from any person who is doing business with or who reasonably speaking may do business with the Department under this Agreement. The only exceptions are ordinary business lunches and items that have received the advance written approval of the Executive Director of the Texas Department of Transportation.

19.2 LIABILITY. The Department may terminate this Agreement if the Vendor or any other person who is doing business with or who reasonably speaking may do business with the Department under this Agreement offers benefits, gifts, or favors to State employees in violation of this policy.

20. CONFLICT OF INTEREST.

The Vendor represents that its firm has no conflict of interest that would in any way interfere with its or its employees' performance of services for the Department under this Agreement or which in any way conflicts with the interests of the Department in connection with this Agreement. The Vendor further certifies that, to the actual knowledge of the individual signing this Contract, this Agreement is not barred because of a conflict of interest pursuant to Texas Government Code, Section 2261.252, between it and the State. Specifically, the Vendor certifies that, to the actual knowledge of the individual signing this Contract, none of the following individuals, nor any of their family members within the second degree of affinity or consanguinity, owns 1% or more interest, or has a financial interest as defined under Texas Govt Code Sec. 2261.252(b), in the Vendor: any member of the Texas Transportation Commission, TxDOT's Executive Director, General Counsel, Chief of Procurement and Field Support Operations, Director of Procurement, or Director of Contract Services. The Vendor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the Department's interests in connection with this Agreement.

21. INDEMNIFICATION.

21.1 ERRORS, OMISSIONS, NEGLIGENT ACTS. The Vendor shall indemnify the Department and its officers and employees from all third party claims and liability for bodily injury or damage to real or tangible property to the extent resulting from any error, omission, or negligent act of the Vendor or of any person employed by the Vendor under this Agreement, while engaged in the performance of the services under this Agreement.

21.2 ATTORNEY FEES. The Vendor shall also indemnify the Department from any and all reasonable expense, including reasonable attorney fees that may be incurred by the Department in litigation or otherwise in resisting said claims or liability for which the Vendor has an obligation to indemnify the Department. The Department shall give prompt written notice of any such claim or suit for which it seeks indemnification hereunder and shall cooperate in all reasonable respects with the Vendor in connection with any such claim. The Vendor shall be entitled

to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing.

22. DISPUTES.

22.1 PROCUREMENTS BY THE VENDOR. The Vendor shall be responsible for the resolution of any claim between the Vendor and any of its subproviders arising out of any procurement made by the Vendor in support of the Services authorized by this Agreement.

22.2 DISPUTES CONCERNING WORK OR COST. Any dispute concerning this Agreement, any Work Authorization, including work or rates thereunder, shall be resolved under 43 TAC §9.2.

23. TERMINATION AND REMEDIES.

23.1 CAUSES. This Agreement or any Work Authorization may be terminated:

- (a) By written agreement of the parties;
- (b) Upon thirty (30) days' written notice from either party because the other party did not fulfill its contractual obligations under this Agreement or any Work Authorization, provided that, the breaching party shall have the opportunity to cure the breach within the notice period;
- (c) Upon thirty (30) days' written notice from the Department, without cause; or
- (d) Notice to the Department from Vendor on grounds that provision of contracted Services violates a binding rule, law, or professional standard to which it is subject.

23.2 PAYMENTS DUE AFTER TERMINATION. If the Department terminates this Agreement or any Work Authorization, then upon such termination, the Department will compensate the Vendor under the terms of the Work Authorization for the Work performed and expenses incurred through the effective date of termination, and the Department will not be liable for any fees other than those that are due at the time of termination. If this Agreement is terminated under Article 23.1(c), the Vendor shall not incur costs during the thirty days after notice is given if those costs are more than the costs incurred during the immediately preceding thirty days.

23.3 INTENTIONALLY LEFT BLANK.

23.4 EXCUSABLE DELAYS. The Vendor will not be considered in default for any failure that arises out of causes beyond its reasonable control. These include acts of God or the public enemy, acts or omissions or failure to cooperate by or on behalf of the Government in its sovereign or contractual capacity (including without limitation, any entities or individuals under the Department's control), acts or omissions of any third party (except for the acts or omissions of subprovider of Vendor performing Services hereunder, unless such subprovider's failure would otherwise be excused under this Section 23.4), fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

23.5 INTENTIONALLY LEFT BLANK

- 23.6 **SURVIVING REQUIREMENTS.** All provisions herein relating to payment of invoices, deliverables, limitation on warranties, limitation on damages, limitation on actions, confidentiality and internal use, survival and interpretation, and assignment or that specifically establish responsibilities that extend beyond the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement. The provisions of Sections 1.2, 22, 23.5 and 25 hereof shall apply to the fullest extent of the law, whether in contract, statute, tort (such as *negligence*), or otherwise, notwithstanding the failure of the essential purpose of any remedy.
24. **SEVERABILITY.**
If any provision in Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision of Agreement. In that case, Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
25. **SUCCESSORS AND ASSIGNS.**
The Vendor and the Department bind themselves and their successors, executors, administrators, and assigns to each other party of this Agreement and to the successors, executors, administrators, and assigns of each other party with regard to all covenants of this Agreement. The Vendor and the Department shall not assign, subcontract, or transfer its interest in this Agreement without the written approval of the other.
26. **PRIOR CONTRACTS SUPERSEDED.**
This Agreement, together with a Work Authorization, constitutes the sole agreement of the parties for the services authorized thereunder and supersedes any prior understandings or written or oral contracts between the parties respecting its subject matter.
27. **NEPOTISM DISCLOSURE.**
- 27.1 In this section, the term "relative" means:
- (a) A person's great grandparent, grandparent, parent, aunt or uncle, sibling, niece or nephew, spouse, child, grandchild, or great grandchild; or
 - (b) The grandparent, parent, sibling, child, or grandchild of the person's spouse.
- 27.2 A notification required by this section shall be submitted in writing to the person designated to receive official notices under Agreement and by first-class mail addressed to Contract Services Office, Texas Department of Transportation, 125 East 11th Street, Austin Texas 78701. The notice shall specify the Vendor's name, the name of the person who submitted the notification, the contract number, the district, division, or office of the Department that is principally responsible for the contract, the name of the relevant Vendor employee, the expected role of the Vendor employee on the project, the name of the Department employee who is a relative of the Vendor employee, the title of the Department employee, the work location of the Department employee, and the nature of the relationship.

Contract for Professional Services

- 27.3 By executing a Work Authorization hereunder, the Vendor is certifying that the Vendor does not have any knowledge that any of its employees or of any employees of a subcontractor who are expected to perform Work under the Work Authorization have a relative that is employed by the Department unless the Vendor has notified the Department of each instance as required by Section 28.2.
- 27.4 If the Vendor learns at any time during the Contract Period that any of its employees or that any of the employees of a subcontractor who are performing Work under this Agreement that have a relative who is employed by the Department, the Vendor shall notify the Department under Section 28.2 of each instance within thirty days of obtaining that knowledge.
- 27.5 If the Vendor violates this section, the Department may terminate this Agreement immediately upon written notice, may seek any sanction permitted by law, and may pursue any other remedy permitted by law.

28. PUBLIC INFORMATION AND CONFIDENTIALITY.

- 28.1 The State will comply with Government Code, Chapter 552, the Public Information Act and 43 Texas Administrative Code §3.10 et seq. ("Public Information Laws") in the release of information produced under this Agreement. Without limiting the foregoing, the Department agrees that all work performed and Deliverables provided hereunder shall be solely for the Department's informational purposes and internal use, and are not intended to be, and should not be, used by any person or entity other than the Department. Additionally, Vendor understands that Services and Deliverables provided by it to the State are subject to external disclosure as required by law.
- 28.2 Neither party (the "receiving party") shall disclose confidential information obtained from the other party (the "disclosing party") under this Agreement without the express written consent of the disclosing party, except as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation or arbitration pertaining hereto.
- 28.3 The Vendor is required to make any information created or exchanged with the state pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

29. PROFESSIONAL STANDARDS.

If circumstances arise that, in the Vendor's professional judgment, prevent the Vendor from completing this Agreement or any of the Services under any Work Authorization, the Vendor retains the right to take any course of action not prohibited by applicable professional standards, including declining to issue a report or other document, or withdrawing from or terminating the applicable Work Authorization or this Agreement generally.

30. E-VERIFY CERTIFICATION

Contract for Professional Services

Pursuant to Executive Order RP-80, the consultant certifies and ensures that for all contracts for services, the consultant shall, to the extent permitted by law, utilize the United States Department of Homeland Security's E-Verify system during the term of this agreement to determine the eligibility of:

1. All persons employed by the consultant during the term of this agreement to perform duties within the State of Texas; and
2. All persons, including subcontractors, assigned by the consultant to perform work pursuant to this agreement.

Violation of this provision constitutes a material breach of this agreement.

31. LIMITATION ON WARRANTIES

THIS IS A SERVICES AGREEMENT. THE VENDOR WARRANTS THAT IT SHALL PERFORM THE SERVICES IN GOOD FAITH AND IN A PROFESSIONAL MANNER. THE VENDOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

32. RESTRICTIONS ON EMPLOYMENT OF FORMER STATE OFFICER OR EMPLOYEE

Vendor agrees to comply with those provisions of Tex. Gov't Code § 572.069 applicable to Vendor as a contractor of the State, if any..

33. BAR FROM PARTICIPATION IN STATE CONTRACTS

The Vendor acknowledges that it may be barred from participating in State contracts including contracts for which purchasing authority is delegated to a State agency, as and to the extent provided in Texas Government Code, Section 2155.077.

ATTACHMENT B
Services To Be Provided By The Department

The Department will cooperate with Consultant in the performance of the Services, including:

- A. Provide a designated Department authorized representative point of contact.
- B. Schedule weekly meetings with the Vendor on status of deliverables.
- C. Provide timely access to appropriate personnel, information, records, and data systems to assist the Vendor by providing information, documentation and explanations. With respect to the data and information provided by the Department to Vendor or its subcontractors for the performance of the Services, the Department shall have the rights required to provide such data and information, and shall do so only in accordance with applicable law and with any procedures agreed upon in writing.
- D. Providing Vendor with adequate working space, equipment, and facilities when it is necessary or otherwise mutually agreed for Vendor to perform work at Department offices;
- E. Providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion;
- F. Promptly notifying Vendor of any issues, concerns, or disputes with respect to the Services.
- G. Performing such other obligations as set forth in each Work Authorization.

The Department shall be solely responsible for, among other things (a) the performance of its personnel and agents; (b) the accuracy and completeness of all data and information provided to Vendor for purposes of the performance of the Services; (c) making all management decisions, performing all management functions, and assuming all management responsibilities; (d) designating a competent management member to oversee the Services; (e) evaluating the adequacy and results of the Services; (f) accepting responsibility for the results of the Services; and (g) establishing and maintaining internal controls, including monitoring ongoing activities. Vendor's performance is dependent upon the Department's timely and effective satisfaction of the Department's responsibilities under this Agreement and any Work Authorization and timely decisions and approvals of the Department in connection with the Services.

ATTACHMENT C
Services To Be Provided By Vendor

The Vendor will perform non-attest accounting services and other related and ancillary non-attest services, as and to the extent set forth in a mutually executed Work Authorization, which may include but are not limited to:

- A. **Advisory services, in which the Vendor's function is to develop findings, conclusions, and recommendations for Department consideration and decision making. Examples of advisory services are an operational review and improvement study, analysis of an accounting system, assisting with strategic planning, and defining requirements for an information system**
- B. **Implementation services, in which the Vendor's function is to put an action plan into effect. Department personnel and resources may be pooled with the Vendor's to accomplish the implementation objectives. The Vendor is responsible to the Department for the conduct and management of engagement activities. Examples of implementation services are providing computer system installation and support, executing steps to improve productivity, and assisting with the merger of organizations.**
- C. **Transaction services, in which the Vendor's function is to provide services related to a specific Department transaction, generally with a third party. Examples of transaction services are insolvency services, valuation services, preparation of information for obtaining financing, analysis of a potential merger or acquisition, and litigation services.**
- D. **Staff and other support services, in which the Vendor's function is to provide appropriate staff and possibly other support to perform tasks specified by the Department. The staff provided will be directed by the Department as circumstances require. Examples of staff and other support services are contractor prequalification services (e.g. working capital determination), data processing, facilities management, computer programming, bankruptcy trusteeship, and controllership activities.**
- E. **Product service, in which the Vendor's function is to provide the Department with a product and associated professional services in support of the installation, use, or maintenance of the product. Examples of product services are contractor prequalification services (including, but not limited to a review of vendor audited financial statements and, notes to the audited financial statements; current ratio; quick liquidity ratio; accounts receivable turnover; inventory turnover; debt to asset ratio; debt to equity ratio; return on assets; return on investment; compliance with the Department's requirements; and evaluation of outside contractor labor burden rate), the sale and delivery of packaged training programs, the sale and implementation of computer software, and the sale and installation of systems development methodologies.**

Contract for Professional Services

ATTACHMENT D-1
Form of Work Authorization

The template below shall be used to for Work Authorizations executed under this Agreement. Drafting Notes are for informational purposes only and shall be deleted prior to the execution of a Work Authorization. In the event any Drafting Notes are inadvertently left in an executed Work Authorization, they are of no force or effect.

WORK AUTHORIZATION NO. _____
CONTRACT FOR PROFESSIONAL ACCOUNTING SERVICES

THIS WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 5 of the Professional Accounting Services Contract No. _____ (the "Agreement") entered into by and between the State of Texas, acting by and through the Texas Department of Transportation (the State), and Deloitte Consulting LLP (Vendor).

PART I. Vendor will perform professional services as specifically described in Exhibit B, which is attached hereto and made a part of this Work Authorization. In addition to any other responsibilities of the State set forth in the Agreement, State shall perform those responsibilities and activities detailed in Exhibit A, which is attached hereto and made a part of this Work Authorization.

<<<<DRAFTING NOTE: If the parties agree to include a Work Plan or Budget for a particular Work Authorization, add a reference to those exhibits here or in Part II, as applicable. Also include those exhibits in the list of exhibits below.>>>>

PART II. The "Not-to-Exceed Amount" payable under this Work Authorization, as defined in Section 5.4 of the Agreement, is \$ _____.

<<<<DRAFTING NOTE: Describe the pricing model for this Work Authorization (e.g., fixed price, time and materials, etc.) and invoicing scheme (e.g., deliverable based invoicing, monthly invoicing, etc.).>>>>

PART III. Payment to Vendor for the services established under this Work Authorization shall be made in accordance with Articles 3 thru 5 of the Agreement.

PART IV. This Work Authorization shall become effective on the date of final acceptance of the parties hereto and shall terminate on _____, unless extended by a supplemental Work Authorization as provided in Article 5 of the Agreement.

PART V. This Work Authorization does not waive the parties' responsibilities and obligations provided under the Agreement.

IN WITNESS WHEREOF, this Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

VENDOR

THE STATE OF TEXAS

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

LIST OF EXHIBITS

Exhibit A Services to be provided by the State

Exhibit B Services to be provided by Vendor

<<<<DRAFTING NOTE: Add references to a Work Schedule and Budget exhibit as applicable.>>>

ATTACHMENT D-2
Form of Supplemental Work Authorization

The template below shall be used to for Work Authorizations executed under this Agreement.

.....

SUPPLEMENTAL WORK AUTHORIZATION NO. ____
WORK AUTHORIZATION NO. ____
CONTRACT FOR PROFESSIONAL ACCOUNTING SERVICES

THIS SUPPLEMENTAL WORK AUTHORIZATION is made pursuant to the terms and conditions of Article 5 of the Professional Accounting Services Contract No. _____ (the "Agreement") entered into by and between the State of Texas, acting by and through the Texas Department of Transportation (the State), and Deloitte Consulting LLP (Vendor).

The following terms and conditions of Work Authorization No. ____ are hereby amended as follows:

This Supplemental Work Authorization shall become effective on the date of final execution of the parties hereto. All other terms and conditions of Work Authorization No. ____ not hereby amended are to remain in full force and effect.

IN WITNESS WHEREOF, this Supplemental Work Authorization is executed in duplicate counterparts and hereby accepted and acknowledged below.

VENDOR

THE STATE OF TEXAS

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Date)

(Date)

Contract for Professional Services

ATTACHMENT E
Schedule of Rates

BUDGET

Rates Per Level Of Service

Level	Hourly Rate
Partner, Principal, Director	\$280
Senior Manager	\$240
Manager	\$220
Senior Consultant	\$170
Consultant	\$150
Senior Associate	\$125
Associate	\$100
Project Support	\$75

Required Documentation

The Vendor shall provide a comprehensive and detailed invoice with reference to the basis for each item charged and shall attach original documentation that validates the charges.

The original invoice shall be mailed monthly to the attention of Cynthia Ochoa at Texas Department of Transportation, Finance Division, 150 E. Riverside Drive, Austin, Texas 78704.

The original invoice shall include:

1. Contract number; work authorization number; date and time of service; a list of work performed in the preceding month; the percentage complete of all pending work; and an estimate of work to be performed by month through the remainder of the contract based on outstanding work authorizations
2. For Work performed on a time and materials basis, each person involved, that person's: name; title; billing rate; hours worked; total cost; summary of activities; and Location of service
3. For each cost for which reimbursement is claimed: identification of the item; actual rate or the maximum rate permitted for state employees, whichever is less; quantity; total cost; and summary of activities.
4. Invoices shall be received by the 15th business day of the next month.
5. Invoices that require correction shall be re-submitted with a new invoice date.

**ATTACHMENT F
HUB Reporting Forms**

ATTACHMENT F-SN

Historically Underutilized Business (HUB)

for State Funded Professional or Technical Services Contracts

No State of Texas HUB Subcontracting Plan Required

It is the policy of the Department to ensure that HUBs shall have an equal opportunity to participate in the performance of contracts; to create a level playing field on which HUBs can compete fairly for contracts and subcontracts; to ensure nondiscrimination on the basis of race, color, national origin, or gender in the award and administration of contracts; to help remove barriers to the participation of HUBs in department contracts; and, to assist in the development of firms that can compete successfully in the market place outside the HUB program.

Subcontracting participation on projects with no HUB Subcontracting Plan Required should be reported on the State of Texas HUB Subcontracting Plan Prime Vendor Progress Assessment Report, the Exhibit F-6 Form. Payment to non-HUBs subproviders must be reported on Exhibit F-6. Payments to HUBs reported on Exhibit F-6 are subject to the following requirements:

DETERMINATION OF HUB PARTICIPATION.

A firm must be an eligible HUB and perform a professional or technical function relating to the project. Once a firm is determined to be an eligible HUB, the total amount paid to the HUB should be reported as race-neutral HUB participation.

A HUB subprovider may subcontract no more than 70% of a contract. The HUB subprovider shall perform not less than 30% of the value of the contract work with assistance of employees employed and paid directly by the HUB; and equipment owned or rented directly by the HUB.

A provider must report a portion of the total value of the contract amount paid to a HUB joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the HUB.

Proof of payment, such as copies of canceled checks, properly identifying the Department's contract number or project number may be required to substantiate the payment, as deemed necessary by the Department.

The provider and any subprovider shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts. These requirements shall be physically included in any subcontract.

REQUIRED FORMS.

If subcontractors are used under the contract that has no stated HUB goal, Exhibits F-1, F-2, F-4 and F-6 are required. Exhibit F-6 is required if no subcontractors are being used to perform work under Agreement.

State of Texas HUB Subcontracting Plan Prime Vendor Progress Assessment Report (Exhibit F-6) **is required monthly even when no subcontracting activity has occurred.** In addition, State of Texas HUB Subcontracting Plan Prime, The Vendor Progress Assessment Report (Exhibit F-6) should be submitted with the Provider's invoice.

